

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

CHRISTOPHER NOEL WENTZELL)

Petitioner,)

vs.)

D.W. NEVEN, *et al.*,)

Respondents.)

2:10-cv-01024-RLH-RJJ

ORDER

This matter is on remand from the Ninth Circuit Court of Appeals to permit petitioner Christopher Wentzell, appearing with counsel, an opportunity to address the Court's concerns about the timeliness of his § 2254 habeas petition. *See Herbst v. Cook*, 260 F.3d 1039, 1043 (9th Cir. 2001); *see also Day v. McDonough*, 547 U.S. 198, 210 (2006). In light of the opinion issued by the Circuit Court, which found the *sua sponte* dismissal of the petition on the basis of the statute of limitations to be improper without first allowing petitioner an opportunity to present arguments, the case shall be reopened and the petition shall be served upon respondents.


A petition for federal habeas corpus should include all claims for relief of which petitioner is aware. If petitioner fails to include such a claim in his petition, he may be forever barred from seeking federal habeas relief upon that claim. *See* 28 U.S.C. §2254(b) (successive petitions). If petitioner is aware of any claim not included in his petition, he should notify the Court of that as soon as possible, perhaps by means of a motion to amend his petition to add the claim.

1 **IT IS THEREFORE ORDERED** that the Clerk shall **REOPEN** the file and
2 **ELECTRONICALLY SERVE** the petition (ECF No. 3) upon the respondents.

3 **IT IS FURTHER ORDERED** that respondents shall have **forty-five (45)** days from
4 entry of this order within which to answer, or otherwise respond to, the petition. In their answer or
5 other response, respondents shall address any claims presented by petitioner in his petition as well as
6 any claims presented by petitioner in any Statement of Additional Claims. Respondents shall raise
7 all potential affirmative defenses in the initial responsive pleading, including lack of exhaustion and
8 procedural default. **Successive motions to dismiss will not be entertained.** If an answer is filed,
9 respondents shall comply with the requirements of Rule 5 of the Rules Governing Proceedings in the
10 United States District Courts under 28 U.S.C. §2254. If an answer is filed, petitioner shall have
11 **forty-five (45) days** from the date of service of the answer to file a reply.

12 **IT IS FURTHER ORDERED** that any state court record exhibits filed by
13 respondents herein shall be filed with a separate index of exhibits identifying the exhibits by number
14 or letter. The CM/ECF attachments that are filed shall further be identified by the number or
15 numbers (or letter or letters) of the exhibits in the attachment. The hard copy of any additional state
16 court record exhibits shall be forwarded – for this case – to the staff attorneys in Reno.

17 Dated this 19th day of July, 2012.

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20 UNITED STATES DISTRICT JUDGE
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